

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

MEMORANDUM

To: Civil Justice Task Force Members
From: Amy Kjose, Civil Justice Task Force Director
Date: July 1, 2010
Re: 35 DAY MAILING – Annual Meeting: Civil Justice Task Force

The American Legislative Exchange Council will host its Annual Meeting from **August 5-8** at the **Manchester Grand Hyatt** in San Diego, CA. If you have not registered for the conference, you may do so at www.alec.org.

About This 35-Day Mailing

This is an electronic-only 35-Day Mailing. In addition to receiving the 35-Day Mailing via e-mail, you may also access it on the Civil Justice Task Force's web page at <http://www.alec.org>. Keep in mind that you will need your ALEC username and password to access the 35-Day Mailing online. If you don't have an ALEC log-in, or if you'd like to change your username and password, contact Briana Mulder at 202-742-8507 or by email at bmulder@alec.org. Conversely, if you choose to receive 35-Day Mailings "snail-mailed" to you, please let me know. We will assume that you prefer the 35-Day Mailing e-mailed to you unless you indicate otherwise.

Meetings Civil Justice Task Force Members Should Attend:

- Civil Justice Task Force Meeting, **2:30-5:30pm, Friday, August 6**
- Working Group on Cy Pres, **10:15-11:15am, Thursday, August 5**
- "Restoring Good Faith to Insurance 'Bad Faith' Legislation" Workshop, **3:15-4:30pm, Thursday, August 5**

Please find the following materials enclosed:

- Annual Meeting Tentative Agenda, Registration Materials, and Reimbursement Policy
- Working Agenda for the Civil Justice Task Force Meeting
- ALEC Mission Statement & Task Force Operating Procedures
- Submitted Legislation and accompanying discussion pieces:
 - *Trespasser Responsibility Act*
 - *The Promoting "Merit" in Merit Selection Act: Model Legislation for State Appellate Judicial Appointments*
- The Cy Pres Working Group Agenda
- Civil Justice Task Force Roster

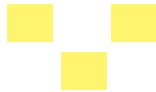
Travel and Accommodations: The conference hotel for the Annual Meeting is the **Manchester Grand Hyatt** located at 1 Market Place.

For State Legislators: Civil Justice Task Force public sector members should contact their State Chairs to inquire about scholarship money to attend the conference. See the attached reimbursement policy for procedures.

I look forward to seeing you in San Diego. If you have any questions or comments regarding the meeting, please contact me at (202) 742-8510 or by e-mail at akjose@alec.org.



Agenda



Tuesday, August 3, 2010

Board of Directors Reception, <i>by invitation only</i>	6:30 p.m. - 7:30 p.m.	Off-site
Board of Directors Dinner, <i>by invitation only</i>	7:30 p.m. - 9:30 p.m.	Off-site

Wednesday, August 4, 2010

Registration Open	12:00 p.m. - 5:00 p.m.	Litrenta Foyer
Joint Board of Directors Meeting	9:00 a.m. - 5:30 p.m.	Elizabeth FG
State Chairs Training Session	2:00 p.m. - 5:00 p.m.	Del Mar AB
NCHL Working Group	3:00 p.m. - 5:00 p.m.	Madeline ABC
Leadership Reception, <i>by invitation only</i>	6:00 p.m. - 7:00 p.m.	Elizabeth Foyer
Leadership Dinner, <i>by invitation only</i> Sponsored by Reynolds American	7:00 p.m. - 9:00 p.m.	Elizabeth GH
<i>Speaker: Ms. Susan Ivey, Chairman, President and CEO, Reynolds American</i>		
Hospitality Suite	9:00 p.m. - 11:00 p.m.	Madeline ABC

Thursday, August 5, 2010

Registration Open	7:30 a.m. - 5:00 p.m.	Litrenta Foyer
State Chairs Meeting	9:00 a.m. - 11:15 a.m.	Elizabeth F
Task Force: International Relations	9:00 a.m. - 11:15 a.m.	Manchester H, I
ALEC Exhibition Hall Open	8:00 a.m. - 5:00 p.m.	Elizabeth ABCDE
Attendee Grab-N-Go Breakfast	8:00 a.m. - 11:15 a.m.	Elizabeth ABCDE
Task Force Working Groups and Subcommittees	8:00 a.m. - 11:15 a.m.	
Fiscal Federalism Working Group	8:00 a.m. - 9:00 a.m.	Elizabeth G
Environmental Health Working Group	8:00 a.m. - 9:30 a.m.	Manchester G
Transportation Subcommittee	9:00 a.m. - 10:00 a.m.	Elizabeth H
Leadership Institute: New Media Workshop	9:00 a.m. - 11:15 a.m.	George Bush
Public Pension Reform Working Group	9:15 a.m. - 10:15 a.m.	Elizabeth G
Health Care Reform: Repeal vs. Implementation	9:15 a.m. - 11:15 a.m.	Mohsen AB
Energy Subcommittee	10:00 a.m. - 11:15 a.m.	Manchester G

Agenda



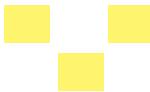
Working Group on Education Reform	10:00 a.m. - 11:15 a.m.	Madeline AB
Corrections and Reentry Working Group	10:15 a.m. - 11:15 a.m.	Elizabeth H
Cy Pres Working Group	10:15 a.m. - 11:15 a.m.	Madeline CD
Fiscal Policy Reform Working Group	10:15 a.m. - 11:15 a.m.	Elizabeth G
Opening Luncheon, sponsored by AT&T <i>Speaker: Randall Stephenson, Chairman, CEO, and President, AT&T Keynote: Gov. Rick Perry (TX)</i>	11:30 a.m. - 1:30 p.m.	Douglas ABC
Workshop: <i>Transferring Credits: Easing the Burden of Students and Taxpayers</i>	1:45 p.m. - 3:00 p.m.	Elizabeth F
Workshop: <i>Regional Climate Initiatives</i>	1:45 p.m. - 3:00 p.m.	Elizabeth G
Workshop: <i>Panel on Prescription Drug Abuse: Good Medicines, Bad Behavior</i>	1:45 p.m. - 3:00 p.m.	Elizabeth H
Workshop: Visa	3:15 p.m. - 4:30 p.m.	Elizabeth F
Workshop: <i>Show Me the Money: Improving Budget Transparency in the States</i>	3:15 p.m. - 4:30 p.m.	Elizabeth G
Workshop: <i>Restoring Good Faith to Insurance "Bad Faith" Legislation</i>	3:15 p.m. - 4:30 p.m.	Elizabeth H
Diageo Wine and Cheese Reception <i>Open to all attendees</i>	5:00 p.m. - 6:00 p.m.	Elizabeth ABCDE
Chairman's Reception, <i>by invitation only</i> <i>Sponsored by AT&T</i>	5:30 p.m. - 6:30 p.m.	Ford ABC
International Relations Reception <i>Sponsored by Reynolds American</i>	6:00 p.m. - 7:00 p.m.	Elizabeth Terrace
California Welcome Reception aboard the U.S.S. Midway, sponsored by California Host Committee	6:30 p.m. - 8:30 p.m.	U.S.S. Midway
Hospitality Suite	9:00 p.m. - 11:00 p.m.	Ford ABC

Friday, August 6, 2010

Registration Open	7:30 a.m. - 5:00 p.m.	Litrenta Foyer
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Agenda



Plenary Breakfast, sponsored by Bayer Corporation

Speaker: Greg Babe, President and CEO, Bayer Corporation
Keynote: Gov. Joe Manchin (WV), invited

ALEC Exhibition Hall Open 9:30 a.m. - 5:00 p.m. Elizabeth ABCDE

Workshop: *Cutting Crime and Budgets: Proven Solutions for Your State* 9:30 a.m. - 10:45 a.m. Elizabeth F

Workshop: *The Changing Face of Journalism in the States* 9:30 a.m. - 10:45 a.m. Elizabeth G

Workshop: *Creating True and Lasting Budget Reform in Your State* 9:30 a.m. - 10:45 a.m. Elizabeth H

Task Force Chairs Meeting 11:00 a.m. - 12:15 p.m. Mohsen AB

Workshop: *The 10th Amendment: Federalism and Restoring State Sovereignty* 11:00 a.m. - 12:15 p.m. Elizabeth F

Workshop: *Building a Free-Market Movement in Your State* 11:00 a.m. - 12:15 p.m. Elizabeth G

Workshop: *Protecting Philanthropic Freedom* 11:00 a.m. - 12:15 p.m. Elizabeth H

Plenary Luncheon, sponsored by Allergan

Speaker: Lynn Salo, Vice President, Allergan Medical US Breast Aesthetics Division

Keynote:

Task Force: Commerce, Insurance, and Economic Development 2:30 p.m. - 5:30 p.m. Elizabeth G

Task Force: Civil Justice 2:30 p.m. - 5:30 p.m. Manchester DE

Task Force: Education 2:30 p.m. - 5:30 p.m. Manchester GH

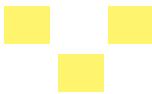
Task Force: Telecom and IT 2:30 p.m. - 5:30 p.m. Manchester AB

Education Task Force Reception, *by invitation only*
Sponsored by Bridgepoint Education 5:30 p.m. - 6:30 p.m. Manchester Foyer

Incoming Chairman's Reception, *by invitation only*
Sponsored by Reynolds American 5:30 p.m. - 6:30 p.m. Ford ABC

State Delegation Night 6:00 p.m. Ford ABC

Hospitality Suite 9:00 p.m. - 11:00 p.m.



Agenda



Saturday, August 7, 2010

Registration Open	7:30 a.m. - 12:00 p.m.	Litrenta Foyer
ALEC Exhibition Hall Open	9:30 a.m. - 12:00 p.m.	Elizabeth ABCD
Plenary Breakfast, Sponsored by Pfizer	8:00 a.m. - 9:15 a.m.	Douglas ABC
Task Force: Public Safety and Elections	9:30 a.m. - 12:30 p.m.	Elizabeth H
Task Force: Health and Human Services	9:30 a.m. - 12:30 p.m.	Manchester AB
Task Force: Energy, Environment, and Agriculture	9:30 a.m. - 12:30 p.m.	Manchester GH
Task Force: Tax and Fiscal Policy	9:30 a.m. - 12:30 p.m.	Elizabeth G
Plenary Luncheon, sponsored by Visa <i>Speaker: Fmr. Maj. Leader Dick Armey</i>	12:30 p.m. - 2:15 p.m.	Douglas ABC
Closing Ceremonies	4:00 p.m. - 5:00 p.m.	

Sunday, August 8, 2010

Prayer Service <i>Speaker: Cal Thomas, Syndicated Columnist</i>	9:00 a.m. - 10:30 a.m.	Ford ABC
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ATTENDEE

REGISTRATION / HOUSING FORM

AMERICAN LEGISLATIVE EXCHANGE COUNCIL **ALEC**

Early registration deadline: June 23, 2010
Standard registration deadline: July 12, 2010
Housing cut-off date: July 12, 2010



Manchester Grand Hyatt - San Diego, CA

Online
www.alec.org

Fax (credit cards only)
202.331.1344

Phone / Questions • Mon-Fri, 9am-5:30 pm Eastern
202.742.8538

Mail • ALEC Registration & Housing
P.O. Box 96754 • Washington, DC 20090-6754

ATTENDEE INFORMATION

Prefix (required) Sen Rep Del Mr Mrs Ms Other _____

Last Name _____ First Name _____ Middle Initial _____ Badge Nickname _____

Title _____

Organization (required) _____

Address _____ Suite # _____

City _____ State/Province _____ County _____ ZIP/Postal code _____

Daytime phone _____ Fax _____ Alternate phone _____

Email (confirmation will be sent by email) _____

Spouse / Guest / Kids' Congress: Please complete the Spouse / Guest / Kids' Congress registration form.

REGISTRATION INFORMATION

Save \$100 on registration by booking your hotel room in ALEC's headquarter hotel

DISCOUNTED REGISTRATION FEES are extended only to registrants booking in ALEC's headquarter hotel. Your \$100 savings will become valid when accommodations are confirmed.

	EARLY until June 23	STANDARD until July 12	ON-SITE begin July 13	DAILY	Amount
<input type="checkbox"/> I am already registered: Order # _____					
<i>**Please note that member fees are subject to verification</i>	June 23	July 12	July 13		
<input type="checkbox"/> ALEC Legislative Member	\$510	\$610	\$710	\$395	\$ _____
<input type="checkbox"/> Legislator / Non-Member	\$625	\$700	\$850	\$495	\$ _____
<input type="checkbox"/> ALEC Private Sector Member	\$840	\$1090	\$1800	\$895	\$ _____
<input type="checkbox"/> Private Sector / Non-Member	\$1075	\$1725	\$2200	\$1095	\$ _____
<input type="checkbox"/> ALEC Non-Profit Member (501(c)(3) status required)	\$615	\$740	\$940	\$595	\$ _____
<input type="checkbox"/> Non-Profit Non-Member (501(c)(3) status required)	\$750	\$950	\$1150	\$795	\$ _____
<input type="checkbox"/> Legislative Staff / Government	\$685	\$785	\$935	\$595	\$ _____
<input type="checkbox"/> ALEC Legacy Member	\$0	\$0	\$0	\$0	\$ _____
Promo Code _____				TOTAL REGISTRATION FEES:	\$ _____

METHOD OF REGISTRATION PAYMENT

Credit Card: Credit cards will be charged immediately. Please fax to the above number for processing.

Amer Express Visa MasterCard

Card # _____

Cardholder (please print) _____

Exp Date (mm/yy) _____ Security Code _____

Signature _____

Checks: Payment must be in U.S. currency drawn on a U.S. bank. Please make check payable to ALEC Registration and send to above address.

Note: Registration forms with enclosed payments must be received by 5pm Eastern on the following dates to be eligible for discounted registration rates: June 9, 2010, for early registration rates, or July 12, 2010, for standard registration rates. Forms and/or payments received beginning July 13, 2010, will be subject to the on-site registration rate. If registering after July 13, 2010, please bring completed form and payment to register on-site.

REGISTRATION CONFIRMATION INFORMATION

Online registrants will receive immediate email confirmation. If registering by form, confirmation will be emailed, faxed, or mailed within 72 hours of receipt of payment.

REGISTRATION CANCELLATION / REFUND INFORMATION

Registrations cancelled prior to 5pm Eastern July 12, 2010 are subject to a \$100 cancellation fee. Registrations are non-refundable after 5pm Eastern July 12, 2010.

HOUSING

RESERVATION CUTOFF FOR ALEC DISCOUNTED RATE IS 12pm Eastern July 12, 2010

Save \$100 on registration by booking your hotel room in ALEC's headquarter hotel

I do not require a reservation at this time.

Arrival Date _____ Departure Date _____

Sharing room with _____

Room type

<input type="checkbox"/> Single	(1 person-1 bed)	\$ 219
<input type="checkbox"/> Double	(2 persons-1 bed)	\$ 239
<input type="checkbox"/> Dbl/Dbl	(2 persons-2 beds)	\$ 239
<input type="checkbox"/> Triple	(3 persons-2 beds)	\$ 259
<input type="checkbox"/> Quad	(4 persons-2 beds)	\$ 259

Note: All rates DO NOT include sales tax 12.71% (subject to change)

A limited number of suites are available upon request. Please call (800) 221-3531 for additional information.

Special requests

ADA room required:
____ Audio ____ Visual ____ Mobile
 Rollaway / crib: _____
 Other:

METHOD OF HOUSING PAYMENT

Please use the same method of payment as above.

Credit Card: Credit cards will be used to guarantee the reservation

Amer Express Visa MasterCard Discover

Card # _____

Cardholder (please print) _____

Exp Date (mm/yy) _____ Security Code _____

Signature _____

Checks: Payment must be in U.S. currency drawn on a U.S. bank. Please make check payable to ALEC and send to above address.

HOUSING CONFIRMATION INFORMATION

Online reservations will receive immediate email confirmation. Reservations received by form will be confirmed via email, fax, or mail within 72 hours of receipt.

HOUSING CANCELLATION / REFUND INFORMATION

Credit cards will be charged one night room and tax in the event of a no show or if cancellation occurs within 72 hours prior to arrival. Departures prior to the departure date confirmed by the hotel at check-in will result in a charge of \$100. Please obtain a cancellation number when your reservation is cancelled.

SPOUSE / GUEST KIDS' CONGRESS REGISTRATION FORM

AMERICAN LEGISLATIVE EXCHANGE COUNCIL
ALEC

Early registration deadline: June 16, 2010
Standard registration deadline: July 12, 2010



Manchester Grand Hyatt - San Diego, CA

Online
www.alec.org

Fax (credit cards only)
202.331.1344

Phone / Questions • Mon-Fri, 9am-5:30 pm Eastern
202.742.8538

Mail • ALEC Registration & Housing
P.O. Box 96754 • Washington, DC 20090-6754

IMPORTANT: Please identify the ALEC attendee

ALEC ATTENDEE Profile Information

First Name	Last Name	REGISTRATION ORDER NUMBER
Daytime Phone		
Email (Confirmation will be sent by email)		

SPOUSE / GUEST / KIDS' CONGRESS Registration Fees		(#) x	EARLY until June 16	STANDARD until July 12	ON-SITE begin July 13	DAILY	Amount
A. Spouse / Guest / Child 18 yrs or older		() x	\$150	\$150	\$150	n/a	= \$_____
B. Kid's Congress (6 months to 17 yrs) for ALEC Members Full Conference Rate		() x	\$250	\$350	\$550	n/a	= \$_____
C. Kid's Congress (6 months to 17 yrs) for Non-ALEC Members Full Conference Rate		() x	\$350	\$450	\$650	n/a	= \$_____
D. Kid's Congress (6 months to 17 yrs) Day rate: Thurs., Fri., or Sat.		() x	\$100	\$150	\$250	n/a	= \$_____

SPOUSE / GUEST / KID'S REGISTRATION FEE(s) TOTAL \$ _____

Spouse / Guest / Child Names <i>Please list the names of the spouse / guest / children below</i>		
Spouse / Guest / Child Name	Child Date of Birth	Registration Type A,B,C,D (above)
1.		5.
2.		6.
3.		7.
4.		8.

Payment Information

Credit Card: Credit cards will be charged immediately. Please fax to the above number for processing.

<input type="checkbox"/> American Express	Card # _____
<input type="checkbox"/> Visa	Cardholder (please print) _____
<input type="checkbox"/> MasterCard	Exp Date (mm/yy) _____ Security Code _____
Signature _____	

Check / money order: Payment must be in U.S. currency drawn on a U.S. bank. Please make check payable to ALEC Registration and send to above address.

Note: Registration forms with enclosed payments must be received by 5pm Eastern on the following dates to be eligible for discounted registration rates: June 9, 2010, for early registration rates, or July 12, 2010, for standard registration rates. Forms and/or payments received after July 12, 2010 will be subject to the on-site registration rate. If registering after July 12, 2010 please bring completed form and payment to register on-site.

Confirmation Information

Online registrants will receive immediate confirmation via email. If registering by written form, confirmation will be emailed (if address provided), faxed, or mailed within 72 hours of receipt of payment.

Cancellation / Refund Information

Registrations cancelled prior to 5:00 p.m. (EST) July 12, 2010 are subject to a \$100 cancellation fee. Registrations are non-refundable after 5:00 p.m. (EST) July 12, 2010.

SCHOLARSHIP POLICY BY MEETING

ALEC Spring Task Force Summit:

1. ***Spring Task Force Summit Reimbursement Form:*** ALEC Task Force Members are reimbursed by ALEC up to \$350.00 for travel expenses. Receipts must be forwarded to the ALEC Policy Coordinator and approved by the Director of Policy.
2. ALEC Task Force Members' room & tax fees for a two-night stay are covered by ALEC.
3. *Official Alternate Task Force Members* (chosen by the State Chair and whose names are given to ALEC more than 35 days prior to the meeting to serve in place of a Task Force Member who cannot attend) are reimbursed in the same manner as Task Force Members.
4. ***State Scholarship Reimbursement Form:*** Any fees above \$350, or expenses other than travel and room expenses can be submitted by Task Force Members for payment from their state scholarship account upon the approval of the State Chair. Receipts must be submitted to the State Chair, who will submit the signed form to the Director of Membership.
5. *Non-Task Force Members* can be reimbursed out of the state scholarship fund upon State Chair approval. Receipts must be submitted to the State Chair, who will submit the appropriate signed form to the Director of Membership.

ALEC Annual Meeting:

State Scholarship Reimbursement Form: State scholarship funds are available for reimbursement by approval of your ALEC State Chair. Expenses are reimbursed after the conference, and may cover the cost of travel, room & tax, and registration. Receipts are to be submitted to the State Chair, who will then submit the signed form to the Director of Membership.

ALEC States & Nation Policy Summit:

1. ***States & Nation Policy Summit Reimbursement Form:*** ALEC offers two scholarships per state to cover the cost of travel, room & tax, and registration not to exceed \$1,000.00 per person for a total of \$2,000.00 per state. ALEC scholarship recipients must be named by the ALEC State Chair. Expenses are submitted to the State Chair and reimbursed after the conference. The State Chair submits the signed form to the Director of Membership.
2. ***State Scholarship Reimbursement Form:*** Any other fees or payments must come out of the state scholarship account, with the approval of the State Chair. Receipts must be submitted to the State Chair, who submits the signed form to the Director of Membership.

ALEC Academies:

Academy Reimbursement Form: Attendees of ALEC Academies are reimbursed by the Task Force Committee hosting the Academy. Attendees will receive a form at the Academy, and will be reimbursed up to \$500.00 for travel, and room & tax fees for a two-night stay by ALEC. Receipts must be forwarded to the appropriate Task Force Director and approved by the Director of Policy.

AMERICAN LEGISLATIVE EXCHANGE COUNCIL *ALEC*

Civil Justice Task Force Meeting

Annual Meeting | Manchester Grand Hyatt | San Diego, C.A.

August 6, 2010 | 2:30 p.m.-5:30 p.m.

2:30 p.m. **Welcome and Introductions**

Senator William J. Seitz, III (OH), Civil Justice Task Force Co-Chair

Victor Schwartz, Partner, Shook, Hardy & Bacon; Civil Justice Task Force Co-Chair

2:45 p.m. **Task Force Update**

Amy Kjose, Civil Justice Task Force Director, ALEC

2:55 p.m. **Civil Justice State Legislative Reform Update**

Matt Fullenbaum, Director of Legislation, American Tort Reform Association (ATRA)

3:00 p.m. **Selling Lawsuits, Buying Trouble: Third Party Litigation Financing**

John Beisner, Partner, Skadden, Arps, Slate, Meagher & Flom LLP

Mr. Beisner will give an overview of a concerning new trend in litigation: that of a third party financing litigation at highly unfavorable rates for consumers.

3:20 p.m. **PRESENTATION: The American Law Institute's Restatement of Torts: Egregious Expansion of the Law**

Senator William J. Seitz, III (OH), Civil Justice Task Force Co-Chair

Victor Schwartz, Partner, Shook, Hardy & Bacon; Civil Justice Task Force Co-Chair

Sen. Seitz and Mr. Schwartz will discuss a number of expansions of the law under the ALI's new Restatement of Torts, partly in response to a recent unprecedeted and advocacy article by the Restatement's Co-Reporter.

3:35 p.m. **DISCUSSION AND VOTE: The Trespasser Responsibility Act**

Matt Fullenbaum, Director of Legislation, American Tort Reform Association

Mark Behrens, Partner, Shook, Hardy & Bacon; Civil Justice Task Force Advisor

Mr. Fullenbaum and Mr. Behrens will present legislation aiming to layout the proper duty owed to a trespasser in response to unprecedeted language in the American Law Institute's Restatement of Torts. After a brief discussion, the Task Force will consider the legislation.

3:55 p.m. **SPECIAL PRESENTATION: Civil Bench and Jury Trials in State Courts**

Thomas Cohen, Statistician, Bureau of Justice Statistics

Mr. Cohen will discuss his recent findings in his Civil Justice Survey of State Courts, a special report put out by the Bureau of Justice Statistics. He will provide data that should be of interest to Task Force members in their work reforming state legal systems.

4:10 p.m. **ROUNDTABLE DISCUSSION:** Legislative Victories and Prospects for 2011
Moderated by Senator William J. Seitz, III (OH), Civil Justice Task Force Co-Chair

This session will provide Civil Justice Task Force members in attendance the opportunity to discuss legislative achievements in 2010 and expected legislative initiatives for 2011.

4:30 p.m. **PRESENTATION: Ranking State Tort Systems**
Lawsuit Climate 2010: Ranking the States
Rich Winget, U.S. Chamber Institute for Legal Reform
2010 Tort Liability Index
Dr. Lawrence McQuillan, Pacific Research Institute

4:55 p.m. **SPECIAL PRESENTATION:** Kings of Tort
Alan Lange, Founder, Yall Politics; Co-Author, Kings of Tort
Tom Dawson, Lead Counsel in the Prosecution of Dickie Scruggs; Co-Author, Kings of Tort

Mr. Lange and Mr. Dawson will discuss their book, *Kings of Tort*, detailing the prosecution of Dickie Scruggs and Paul Minor, infamous Mississippi tort barons.

5:10 p.m. **DISCUSSION AND VOTE:** Promoting ‘Merit’ in “Merit Selection:” Best Practices in Commission-Based Judicial Selection
*Page Faulk, Vice President of Policy and Research,
U.S. Chamber Institute for Legal Reform*

Ms. Faulk will present legislation providing best practices for states with judicial merit selection systems. This legislation will not advocate for one form of judicial selection over another. After a brief discussion, the Task Force will consider the legislation.

5:30 p.m. **Adjournment**



Mission Statement

The American Legislative Exchange Council's mission is...

To advance the Jeffersonian Principles of free markets, limited government, federalism, and individual liberty through a nonpartisan public-private partnership among America's state legislators, concerned members of the private sector, the federal government, and the general public.

To promote these principles by developing policies that ensure the powers of government are derived from, and assigned to, first the People, then the States, and finally the Federal Government.

To enlist state legislators from all parties and members of the private sector who share ALEC's mission.

To conduct a policy making program that unites members of the public and private sector in a dynamic partnership to support research, policy development, and dissemination activities.

To prepare the next generation of political leadership through educational programs that promote the principles of Jeffersonian democracy, which are necessary for a free society.



American Legislative Exchange Council TASK FORCE OPERATING PROCEDURES

I. MISSION OF TASK FORCES

Assume the primary responsibility for identifying critical issues, developing ALEC policy, and sponsoring educational activities which advance the Jeffersonian principles of free markets, limited government, federalism, and individual liberty. The mission will be accomplished through a non-partisan, public and private partnership between ALEC's legislative and private sector members in the specific subject areas assigned to the Task Force by the Board of Directors.

II. TASK FORCE RESPONSIBILITIES

- A. Task Forces have the primary responsibility for identifying critical issues and developing ALEC's official policy statements and model legislation appropriate to the specific subject areas of the Task Force.
- B. Task Forces serve as forums for an exchange of ideas and sharing of experiences between ALEC's state legislator and private sector members.
- C. Task Forces are responsible for developing and sponsoring the following educational activities appropriate to the specific subject area of the Task Force:
 - publications that express policy positions, including, but not limited to State Factors and Action Alerts;
 - educational communication and correspondence campaigns;
 - issue specific briefings, press conferences and press campaigns;
 - witness testimony and the activities of policy response teams;
 - workshops at ALEC's conferences; and
 - specific focus events.
- D. The Executive Director is to Task Forces are responsible for developing an annual budgets, which shall include expenses associated with Task Force meetings and educational activities. A funding mechanism to finance all meetings and educational activities proposed by Task Forces must be available before they can be undertaken.

III. GENERAL PROCEDURES

- A.** Requests from ALEC members for policy statements, model legislation and educational activities shall be directed by the Executive Director to the appropriate Task Force, or the Board of Directors if the issue does not fall within the jurisdiction of any Task Force. The appropriate Public and Private Sector Task Force Co-Chairs determine the agenda for each Task Force meeting, and the meetings will be called and conducted in accordance with these Operating Procedures.

The Director of Policy with the consent of the Executive Director assigns a model bill or resolution to the most appropriate Task Force based on Task Force content and prior jurisdictional history 35 days before a Task Force Meeting. All Task Force Co-Chairs will be provided an email or fax summary of all model bills and resolutions 35 days before the Task Force meeting

If both the Co-Chairs of a Task Force are in agreement that they should have jurisdiction on model legislation or a resolution, the legislation or resolution will be considered by the Task Force. If the other Task Force Co-Chairs believe they should have jurisdiction or if the author of the model bill or resolution does not agree on the jurisdictional assignment of the bill, they will have 10 days after the 35-day mailer deadline to submit in writing or by electronic appeal to the Director of Policy their intent to challenge the jurisdiction assignment. The Director of Policy will notify the Executive Director who will in turn notify the National Chair and the Private Enterprise Board Chair. The National Chair and the Private Enterprise Board Chair will in turn refer the matter in question to the Board of Directors Task Force Board Committee. The Director of Policy will establish a conference call for the Task Force Board Committee co-chairs, the author, the affected Task Force Co-Chairs and the Director of Policy at a time convenient for all participants.

The Task Force Board Committee Co-Chairs shall listen to the jurisdictional dispute by phone or in person within 10 days of the request. If both Task Force Board Committee Co-Chairs are in agreement that the Director of Policy made an incorrect jurisdictional referral, only then will the model bill or resolution be reassigned to a committee as they specify once agreed upon by the National Chair and the Private Enterprise Board Chair. The bill or model resolution is still eligible to be heard in whatever Task Force it is deemed to be assigned to as if submitted to the correct Task Force for the 35-day mailer. The National Chair and the Private Enterprise Board Chair decision is final on this model bill or resolution.

Joint referral of model legislation and/or resolutions are allowed if all the affected Task Force Co-Chairs agree. All model legislation and resolutions that have been referred to, more than one Task Force must pass the identical language in both Task Forces within two consecutive Task Force meetings. It is at the Task Force

Co-Chairs discretion how they will handle the hearings of the model legislation or resolution. Both sets of co-chairs have the ability to call a working group, subcommittee, or simply meet consecutively or concurrently if necessary.

If the Task Force co-chairs both agree to waive jurisdiction, they may do so as long as another Task Force still has jurisdiction.

The National Chair and the Private Sector Board Chair will rely upon the Task Force Board Committee Co-Chairs for advice and recommendations on model legislation or resolutions when no jurisdiction in any of the existing Task Forces in operation can be found. The Task Force Board Committee Co-Chairs will work with the Executive Director and the Director of Policy to identify public and private sector Task Force members (not alternates) from the existing Task Forces should their expertise be of assistance to the Task Force Board Committee in reaching a determination and recommendation for approval by the National Chair and the Private Enterprise Board Chair.

- B. The National Chair and the Private Sector Board Chair will rely upon the Task Force Board Committee Co-Chairs for advice and recommendations on model legislation or resolutions when no jurisdiction in any of the existing Task Forces in operation can be found. The Task Force Board Committee Co-Chairs will work with the Executive Director and the Director of Policy to identify public and private sector Task Force members (not alternates) from the existing Task Forces should their expertise be of assistance to the Task Force Board Committee in reaching a determination and recommendation for approval by the National Chair and the Private Enterprise Board Chair.
- C. The Board of Directors shall have ultimate authority over Task Force procedures and actions including the authority to create, to merge or to disband Task Forces and to review Task Force actions in accordance with these Operating Procedures. Nothing in these Operating Procedures prohibits the Board of Directors from developing ALEC policy; however, such a practice should be utilized only in exceptional circumstances. Before the policy is adopted by the Board of Directors, it should be sent to the Public and Private Sector Task Force Co-Chairs under whose jurisdiction the matter falls for review and comment back to the Board of Directors.
- D. The operating cycle of a Task Force is two years. A new operating cycle begins on January 1 of each odd numbered year and ends on December 31 of the following even numbered year. Task Force activities shall be planned and budgeted on an annual basis within each two-year operating cycle.
- E. ~~At the ALEC Annual Meeting, each Task Force will be responsible for determining an operating budget for the succeeding calendar year. The Executive Director will notify the Task Force Co-Chairs, at the ALEC Annual Meeting, what inflation factor will be used by the Task Force to determine the operating~~

~~and programming budgets. Task Force membership and budget information will be reported to the Executive Director by the Public and Private Sector Task Force Co-Chairs. The Executive Director will present this information to the Board of Directors at its regular fall meeting.~~

- F. If a Task Force is unable to develop an operating budget, the Board of Directors will determine whether to continue the operations of the Task Force. This determination will be made according to: (1) the level of membership on the Task Force, and (2) the need for continued services developed by the Task Force for ALEC.
- G. The Board of Directors shall have the authority to allocate limited general support funds to finance the annual operating budget of Task Forces that meet the requirements prescribed in Section III (E). The Executive Director shall determine, and report to the Board of Directors, the amount of general support funds available to underwrite such Task Forces.

IV. MEMBERSHIP AND MEMBER RESPONSIBILITIES

- A. The membership of a Task Force consists of legislators who are members in good standing of ALEC and are duly appointed to the Task Force, in accordance with Section VI (A) and private sector organizations that are full members of ALEC, contribute to the assessment for the Task Force operating budget, and are duly appointed to the Task Force, in accordance with Section VI (B). Private sector organizations that were full members of ALEC and contributed the assessment for the Task Force's operating budget in the previous year, can be appointed to the Task Force for the current year, conditional upon renewal of full ALEC membership and receipt of the current year's assessment for the Task Force operating budget prior to March 31st, unless an alternative date has been approved by the Executive Director.
- B. Each Task Force shall have least two Co-Chairs; a Public Sector Task Force Co-Chair and a Private Sector Task Force Co-Chair. The Public Sector Task Force Co-Chair must be a member of the Task Force and appointed in accordance with Section VI (A). The Private Sector Co-Chair must represent a private sector member of the Task Force and be appointed in accordance with Section VI(B). The Co-Chairs shall be responsible for:
 - (1) calling the Task Force and the Executive Committee meetings to order, setting the agenda and co-chairing such meetings;
 - (2) appointing and removing legislators and private sector members to and from the Task Force Executive Committee and subcommittees;
 - (3) creating subcommittees, and determining each subcommittee's mission, membership limit, voting rules, deadlines, and term of service; and

- (4) selecting Task Force members to provide support for and against Task Force policies during formal Board reviews.
- C. Each Task Force shall have an Executive Committee appointed by the Public and Private Sector Task Force Co-Chairs that is appropriate in number to carry out the work product and strategic plan of ALEC and the Task Force. The Executive Committee shall consist of the Public Sector Task Force Co-chair, the Private Sector Task Force Co-Chair, the subcommittee co-chairs, and the remainder will be an equal number of legislative and private sector Task Force members. The Executive Committee will be responsible for determining the operating budget and proposing plans, programs and budgets for the succeeding year in accordance with (Section V (B); determining if a proposed educational activity conforms to a previously approved model bill, resolution or policy statement in accordance with (Section IX (F); and determining if an emergency situation exists that justifies waiving or reducing appropriate time limits in accordance with (Section VIII (H)).
- D. Each Task Force may have any number of subcommittees, consisting of Task Force members and advisors to focus on specific areas and issues and make policy recommendations to the Task Force. The Task Force Co-chairs, shall create subcommittees and determine each subcommittee's mission, membership limit, voting rules, deadlines, and term of service. Any model bill, resolution or policy statement approved by a subcommittee must be approved by the Task Force before it can be considered official ALEC policy.
- E. Each Task Force may have advisors, appointed in accordance with Section VI (G). Advisors shall assist the members and staff of the Task Force. They shall be identified as advisors on official Task Force rosters, included in all official Task Force mailings and invited to all Task Force meetings. Advisors may also have their expenses paid at Task Force meetings covered by the Task Force operating budget with the approval of the Task Force Co-Chairs. An advisor cannot be designated as the primary contact of a private sector Task Force member, cannot be designated to represent a private sector Task Force member at a Task Force, Executive Committee, or subcommittee meeting, and cannot offer or vote on any motion at a Task Force, Executive Committee, or subcommittee meeting.

V. Task Force Budgets

- A. Each Task Force shall develop and operate a yearly budget to fund meetings.
- B. The operating budget shall be used primarily to cover expenses for Task Force meetings, unless specific funds within the budget are authorized for other use by the Task Force. The operating budget shall be assessed equally among the private sector members of the Task Force. The Executive Director, in consultation with the Task Force Co-Chairs shall determine which costs associated with each meeting will be reimbursed from the operating budget. Any funds remaining in a

Task Force's operating budget at the end of a year are transferred to ALEC's general membership account.

- C. The operating budget shall not be used to cover Task Force meeting expenses associated with alternate task force members' participation, unless they are appointed by their State Chair to attend the Spring Task Force Summit with the purpose to serve in place of a Task Force Member who is unable to attend. Task Force meeting expenses of alternate task force members shall be covered by their state's scholarship account.
- D. The programming budget shall be used to cover costs associated with educational activities. Contributions to the programming budget are separate, and in addition to operating budget contributions and annual general support/membership contributions to ALEC. The Executive Director shall determine the contribution required for each educational activity.

VI. PROCESS FOR SELECTING TASK FORCE MEMBERS, CHAIRS, COMMITTEES AND ADVISORS

- A. Prior to February 1 of each odd-numbered year, the current and immediate past National chairman will jointly select and appoint in writing three legislative members and three alternates to the Task Force who will serve for the current operating cycle, after receiving nominations from ALEC's Public and Private State Chairs, the Executive Director and the ALEC Public and Private Sector members of the Board. At any time during the year, the National Chairman may appoint in writing new legislator members to each Task Force, except that no more than three legislators from each state may serve as members of any Task Force, no legislator may serve on more than one Task Force and the appointment cannot be made earlier than thirty days after the new member has been nominated. In an effort to ensure the nonpartisan nature of each Task Force, it is recommended that no more than two legislators of any one political party from the same state be appointed to serve as members of any Task Force. A preference will be given to those ALEC legislator members who serve on or chair the respective Committee in their state legislature. A preference will be given to legislators who sponsor ALEC Task Force model legislation in the state legislature.
- B. Prior to January 10 of each odd-numbered year, the current and immediate past National Chairman will jointly select and appoint in writing the Task Force Chair who will serve for the current operating cycle, after receiving nominations from the Task Force. Nominations will be requested by the outgoing Task Force Chair and may be placed in rank order prior to transmittal to the Executive Director no later than December 1 of each even-numbered year. No more than five names may be submitted in nomination by the outgoing Task Force chair. The current and immediate past National Chairmen will jointly make the final selection, but

should give strong weight to the recommendations of the outgoing Task Force Chair. In an effort to empower as many ALEC leaders as possible, State Chairs and members of the Board of Directors will not be selected as Task Force Chairs. Task Force Chairs shall serve for one operating cycle term. Where special circumstances warrant, the current and immediate past National Chairmen may reappoint a Task Force Chair to a second operating cycle term.

- C. Prior to February 1 of each odd numbered year, the Public and Private Sector Task Force Co-Chairs will select and appoint in writing the legislative and private sector members of the Task Force Executive Committee, who will serve for the current operating cycle. The Public and Private Sector Task Force Co-Chairs will select and appoint in writing the legislative and private sector members and advisors to any subcommittee.
- D. Prior to February 1 of each year, the Private Enterprise Board Chair and the immediate past Private Enterprise Board Chair will select and appoint in writing the private sector members to the Task Force who will serve for the current year. The appointment letter shall be mailed to the individual designated as the primary contact for the private sector entity. At any time during the year, the Chair of the Private Enterprise Board may appoint in writing new private sector members to each Task Force, but no earlier than thirty days after the new member has qualified for full membership in ALEC and contributed the assessment for the appropriate Task Force's operating budget.
- E. Prior to January 10 of each odd-numbered year, the Chair of the Private Enterprise Board and the immediate past Private Enterprise Board Chair will select and appoint in writing the Task Force Private Sector Co-Chair who will serve for the current operating cycle, after receiving nominations from the Task Force. Nominations will be requested by the outgoing Task Force Private Sector Chair and may be placed in rank order prior to transmittal to the Chair of the Private Enterprise Board. The Chair and the immediate past Chair of the Private Enterprise Board will make the final selection, but should give strong weight to the recommendations of the outgoing Private Sector Task Force Co-Chair. In an effort to empower as many ALEC private sector members as possible, Private Enterprise State Chairs and members of the Private Enterprise Board will not be selected as Private Sector Task Force Co-Chairs. Private Sector Task Force Co-Chairs shall serve for one operating cycle term. Where special circumstances warrant, the current and immediate past Chair of the Private Enterprise Board may reappoint a Task Force Private Sector Chair to a second operating cycle term.
- F. Prior to February 1 of each odd-numbered year, the Task Force Private Sector Co-Chair will select and appoint in writing the private sector members of the Task Force Executive Committee, who will serve for the current operating cycle. The Task Force Private Sector Co-Chair shall select and appoint in writing the private sector members of any subcommittees.

G. The Public and Private Sector Task Force Co-Chairs, may jointly appoint subject matter experts to serve as advisors to the Task Force. The National Chair and the Private Enterprise Board Chair may also jointly recommend to the Task Force Co-Chairs subject matter experts to serve as advisors to the Task Force.

VII. REMOVAL AND VACANCIES

- A. The National Chair may remove any Public Sector Task Force Co-Chair from his position and any legislative member from a Task Force with or without cause. Such action will not be taken except upon thirty days written notice to such Chair or member whose removal is proposed. For purposes of this subsection, cause may include failure to attend two consecutive Task Force meetings.
- B. The Public Sector Task Force Co-Chair may remove any legislative member of an Executive Committee or subcommittee from his position with or without cause. Such action shall not be taken except upon thirty days written notice to such member whose removal is proposed. For purposes of this subsection, cause may include failure to attend two consecutive meetings.
- C. The Chairman of the Private Enterprise Board may remove any Private Sector Task Force Co-Chair from his position and any private sector member from a Task Force with cause. Such action shall not be taken except upon thirty days written notice to such Chair or member whose removal is proposed. For purposes of this subsection, cause may include but is not limited to the non-payment of ALEC General Membership dues and the Task Force dues. .
- D. The Private Sector Task Force Co-Chair may remove any private sector member of an Executive Committee or subcommittee from his position with cause. Such action shall not be taken except upon thirty days written notice to such member whose removal is proposed. For purposes of this subsection, cause may include but is not limited to the non-payment of ALEC General Membership dues and the Task Force dues.
- E. The Public and Private Sector Task Force Co-Chairs may remove an advisor from his position with or without cause. Such action shall not be taken except upon thirty days written notice to such advisor whose removal is proposed.
- F. Any member or advisor may resign from his position as Public Sector Task Force Co-Chair, Private Sector Task Force Co-Chair, public or private sector Task Force member, Task Force advisor, Executive Committee member or subcommittee member at any time by writing a letter to that effect to the Public Sector and Private Sector Task Force Co-Chairs. The letter should specify the effective date of the resignation, and if none is specified, the effective date shall be the date on which the letter is received by the Public and Private Task Force Co-Chairs.

G. All vacancies for Public Sector Task Force Co-Chair, Private Sector Task Force Co-Chair, Executive Committee member and subcommittee member shall be filled in the same manner in which selections are made under Section VI. All vacancies to these positions must be filled within thirty days of the effective date of the vacancy.

VIII. MEETINGS

A. Task Force meetings shall only be called by the joint action of the Public and Private Sector Task Force Co-Chairs. Task Force meetings cannot be held any earlier than thirty-five days after being called, unless an emergency situation has been declared pursuant to Section VIII(H), in which case Task Force meetings cannot be held any earlier than ten days after being called. It is recommended that, at least once a year, the Task Forces convene in a common location for a joint Task Force Summit. Executive Committee meetings shall only be called by the joint action of the Public and Private Sector Task Force Co-Chairs and cannot be held any earlier than three days after being called, unless the Executive Committee waives this requirement by unanimous consent.

B. At least forty-five days prior to a task force meeting any model bill, resolution or policy must be submitted to ALEC staff that will be voted on at the meeting. At least thirty-five days prior to a Task Force meeting, ALEC staff shall distribute copies of any model bill, resolution or policy statement that will be voted on at that meeting. This requirement does not prohibit modification or amendment of a model bill, resolution or policy statement at the meeting. This requirement may be waived if an emergency situation has been declared pursuant to Section VIII(H).

C. All Task Force meetings are open to registered attendees and invited guests of ALEC meetings and conferences. Only regular Task Force Members may introduce any resolution, policy statement or model bill. Only Task Force members will be allowed to participate in the Task Force meeting discussions and be seated at the table during Task Force meetings, unless otherwise permitted by the Public and Private Sector Task Force Co-Chairs.

D. ALEC private sector member organizations may only be represented at Task Force and Executive Committee meetings by the individual addressed in the appointment letter sent pursuant to Section VI(D) or a designee of the private sector member. If someone other than the individual addressed in the appointment letter is designated to represent the private sector member, the designation must be submitted in writing to the Public and Private Sector Task Force Co-Chairs before the meeting, and the individual cannot represent any other private sector member at the meeting.

- E. All Task Force and Executive Committee meetings shall be conducted under the guidelines of Roberts Rules of Order, except as otherwise provided in these Operating Procedures. A copy of the Task Force Operating Procedures shall be included in the briefing packages sent to the Task Force members prior to each meeting.
- F. A majority vote of legislative members present and voting and a majority vote of the private sector members present and voting, polled separately, are required to approve any motion offered at a Task Force or Executive Committee meeting. A vote on a motion to reconsider would be only with the sector that made the motion. Members have the right, in a voice vote, to abstain and to vote present by roll-call vote. In all votes a member can change their vote up until the time that the result of the vote is announced. Only duly appointed members or their designee as stated in Section VIII (D) that are present at the meeting may vote on each motion. No proxy, absentee or advance voting is allowed.
- G. The Public Sector Task Force Co-Chair and the Private Sector Task Force Co-Chair, with the concurrence of a majority of the Executive Committee, polled in accordance with Section VIII (F), may schedule a Task Force vote by mail or ~~fax~~ any form of electronic communication on any action pertaining to policy statements, model legislation or educational activity. The deadline for the receipt of votes can be no earlier than thirty-five days after notification of the vote is mailed or ~~faxed~~ notified by any form of electronic communication, unless an emergency situation is declared pursuant to Section VIII (H), in which case the deadline can be no earlier than ten days after notification is mailed or ~~faxed~~ notified by any form of electronic communication. Such votes are exempt from all rules in Section VIII, except: (1) the requirement that copies of model legislation and policy statements be mailed or ~~faxed~~ notified by any form of electronic communication with the notification of the vote and (2) the requirement that a majority of legislative members voting and a majority of the private sector members voting, polled separately, is required to approve any action by a Task Force.
- H. For purposes of Sections VIII(A), (B) and (G), an emergency situation can be declared by:
 - (1) Unanimous vote of all members of the Task Force Executive Committee present at an Executive Committee meeting prior to the meeting at which the Task Force votes on the model bill, resolution or policy statement; or
 - (2) At least three-fourth majority vote of the legislative and private sector Task Force members (voting in accordance with Section VIII (F)) present at the meeting at which the members vote on the model bill, resolution or policy statement.

- I. Ten Task Force members shall constitute a quorum for a Task Force meeting. One-half of the legislative and one-half of the private sector members of an Executive Committee shall constitute a quorum for an Executive Committee meeting.

IX. *REVIEW AND ADOPTION PROCEDURES*

- A. All Task Force policy statements, model bills or resolutions shall become ALEC policy either: (1) upon adoption by the Task Force and affirmation by the Board of Directors or (2) thirty days after adoption by the Task Force if no member of the Board of Directors requests, within those thirty days, a formal review by the Board of Directors. General information about the adoption of a policy position may be announced upon adoption by the Task Force.
- B. The Executive Director shall notify the Board of Directors of the approval by a Task Force of any policy statement, model bill or resolution within ten days of such approval. Members of the Board of Directors shall have thirty days from the date of Task Force approval to review any new policy statement, model bill or resolution prior to adoption as official ALEC policy. Within those thirty days, any member of the Board of Directors may request that the policy be formally reviewed by the Board of Directors before the policy is adopted as official ALEC policy.
- C. A member of the Board of Directors may request a formal review by the Board of Directors. The request must be in writing and must state the cause for such action and a copy of the letter requesting the review shall be sent by the National Chairman to the appropriate Task Force Chair. The National Chairman shall schedule a formal review by the Board of Directors no later than the next scheduled Board of Directors meeting.
- D. The review process will consist of key members of the Task Force, appointed by the Task Force Chair, providing the support for and opposition to the Task Force position. Position papers may be faxed or otherwise quickly transmitted to the members of the Board of Directors. The following is the review and adoption procedures:
 - Notification of Committee: Staff will notify Task Force Chairs and the entire task force when the Board requests to review one of the Task Forces' model bills or resolutions.
 - Staff Analysis: Will be prepared in a neutral fashion. The analyses will include:
 - History of Task Force action
 - Previous ALEC official action/resolutions
 - Issue before the board
 - Proponents arguments

- Opponents arguments
- Standardized Review Format: To ensure fairness, a set procedure will be used as the format to ensure the model bill/resolution has a fair hearing before the Board.
 - Task Force Chair(s) will be invited to attend the Board Review
 - Task Force Chair(s) will decide who will present in support and in opposition for the model bill/resolution before the Board.
 - Twenty minutes that is equally divided will be given for both sides to present before the Board.
 - It is suggested that the Board not take more than twenty minutes to ask questions of the presenters.
 - Presenters will then be excused and the Board will have a suggested twenty more minutes for discussion and vote.
 - All votes will be recorded for the official record.
- Notification of Committee: The Director of Policy will notify presenters immediately after the vote. If the Board votes to send the model bill/resolution back to the task force, the Board will instruct the Director of Policy or another board member what to communicate.

E. The Board of Directors can:

- (1) Vote to affirm the policy or affirm the policy by taking no action, or
- (2) Vote to disapprove the policy, or
- (3) Vote to return the policy to the Task Force for further consideration providing reasons therefore.

F. Task Forces may only undertake educational activities that are based on a policy statement, model bill or resolution that has been adopted as official ALEC policy, unless the Task Force votes to undertake the educational activity, in which case the educational activity is subjected to the same review process outlined in this Section. It is the responsibility of the Task Force Executive Committee to affirm by three-fourths majority vote conducted in accordance with Section VIII that an educational activity conforms to a policy statement, model bill or resolution.

X. EXCEPTIONS TO THE TASK FORCE OPERATING PROCEDURES.

Exceptions to these Task Force Operating Procedures must be approved by the Board of Directors.

Trespasser Responsibility Act

Summary

The Trespasser Responsibility Act provides that land possessors owe no duty of care to trespassers and are not liable for harms to trespassers except in limited situations that are recognized in the common law of most states.

The model act reflects the common law's status-based approach to land possessor duties with respect to invitees, licensees, and trespassers. The act is a response to recent "reformist" efforts to replace the historical status-based approach with a unitary standard imposing on land possessors a duty to exercise reasonable care to all entrants, including trespassers in situations in which liability traditionally has not been imposed. The act would prevent trespassers from being elevated to the same legal status as non-trespassers in situations where tort law previously treated trespassers differently out of respect for the rights of property owners and sound public policy. The proposal would protect land possessors from costly litigation and unpredictable liability. The proposal would particularly benefit those who own or rent residential property. The model act also would reinforce the notion of trespasser personal responsibility and promote the traditional right of land possessors to have exclusive control over their land.

Model Legislation

Section 1. {Title}

This chapter shall be known and may be cited as the "Trespasser Responsibility Act".

Section 2. {Trespasser Responsibility Act}

(A) **GENERAL RULE**- A possessor of land, including an owner, lessee, or other occupant, does not owe a duty of care to a trespasser and is not subject to liability for any injury to a trespasser.

(B) **EXCEPTIONS**.—Notwithstanding (a), a possessor of land may be subject to liability for physical injury or death to a trespasser in the following situation[s]-

(1) **INTENTIONAL HARMS**—A possessor may be subject to liability if the trespasser's physical injury or death was intentionally caused by the possessor, except that a possessor may use reasonable force to repel a trespasser that has entered the land or a building with the intent to commit a crime.

(2) **HARMS TO TRESPASSING CHILDREN CAUSED BY HIGHLY DANGEROUS ARTIFICIAL CONDITIONS ("ATTRACTIVE NUISANCES")**.-A possessor may be subject to liability for physical injury or death to a child trespasser [age sixteen or younger] resulting from an artificial condition on the land if-

(a) the possessor knew or had reason to know that children were likely to trespass at the location of the condition;

(b) the condition is one the possessor knew or reasonably should know involved an unreasonable risk or death or serious bodily harm to such children;

- (c) the injured child did not discover the condition or realize the risk involved in the condition or coming within the area made dangerous by it;
- (d) the utility to the possessor of maintaining the condition and the burden of eliminating the danger were slight as compared with the risk to the child involved; and
- (e) the possessor failed to exercise reasonable care to eliminate the danger or otherwise protect the injured child.

[(3) HARMS TO CONSTANT TRESPASSERS ON A LIMITED AREA CAUSED BY HIGHLY DANGEROUS ACTIVITIES OR HIGHLY DANGEROUS ARTIFICIAL CONDITIONS.-A possessor may be subject to liability for physical injury or death to a trespasser if the possessor knows, or from facts within the possessor's knowledge should know, that trespassers consistently intrude upon a limited area of the possessor's land and-

- (a) the trespasser's harm was caused by the possessor's failure to carry on an activity involving a risk of death or serious bodily harm with reasonable care for the trespasser's safety; or
- (b)(i) the trespasser's harm was caused by an artificial condition created or maintained by the possessor; (ii) the possessor knew the condition was likely to cause death or serious bodily injury to such a trespasser; (iii) the condition was of such a nature that the possessor had reason to believe that the trespasser would not discover it, and (iv) the possessor failed to exercise reasonable care to warn the trespasser of the condition and the risk involved.]

[(4) HARMS TO KNOWN TRESPASSERS FROM DANGEROUS ACTIVITIES, HIGHLY DANGEROUS ARTIFICIAL CONDITIONS, OR CONTROLLABLE FORCES.- A possessor may be subject to liability for physical injury or death to a known trespasser if-

- (a) the trespasser was harmed as a result of the possessor's failure to carry on dangerous activities on the land with reasonable care for the trespasser's safety;
- (b)(i) the trespasser was harmed as a result of the possessor's failure to exercise reasonable care to warn the trespasser about an artificial condition maintained by the possessor; (ii) the condition involved a risk of death or serious bodily injury, and (iii) the condition was of such a nature that the possessor had reason to believe the trespasser would not discover the condition or realize the risk involved; or
- (c)(i) the possessor knew or had reason to know that the trespasser was in dangerous proximity to a moving force in the possessor's immediate control just before the harm occurred; and (ii) the trespasser was harmed as a result of the possessor's failure to exercise reasonable care so as to prevent the force from harming the trespasser or failed to exercise reasonable care to provide a warning that was reasonably adequate to allow the trespasser to avoid the harm.]

(C) DEFINITION.- "trespasser" means a person who enters on the property of another without permission and without an invitation, express or implied.

Section 8. {Severability Clause}

Section 9. {Repealer Clause}

Section 10. {Effective Date}

Trespasser Responsibility Act

Background and Discussion

Under the existing law in most states, land possessors, including an owner, lessee, or other occupant, generally owe no duty of reasonable care to trespassers and are not liable for their injuries. The traditional rule, set forth in the Restatement (Second) of Torts § 333 (1965), states that “a possessor of land is not liable to trespassers for physical harm caused by his failure to exercise reasonable care (a) to put the land in a condition reasonably safe for their reception, or (b) to carry on his activities so as not to endanger them.” Restatement (Second) §§ 334-339 provide for the possibility of trespasser liability in a few special situations that are narrowly circumscribed: *i.e.*, harms to constant trespassers on a limited area from highly dangerous activities carried on at that location by the possessor (§ 334) or highly dangerous artificial conditions created or maintained by the possessor at that location (§ 335); harms to known trespassers from dangerous activities carried on by the possessor (§ 336) or highly dangerous artificial conditions maintained by the possessor (§ 337), or from forces, such as moving machinery, in the possessor’s immediate control (§ 338); and harms to trespassing children from highly dangerous artificial conditions under the doctrine of attractive nuisances (§ 339). These standards have been in place for a very long time and continue to be fair, workable, and predictable.

A new Restatement of the Law Third Torts: Liability for Physical and Emotional Harm approved by the American Law Institute (ALI), however, reverses the traditional rule. Section 51 of the Restatement Third begins by imposing on land possessors a duty to exercise reasonable care to all entrants, including unwanted trespassers. The only exception to the broad new duty rule would be for harms to “flagrant trespassers”—a concept that is not defined in the new Restatement and that appears in no state’s tort law. Therefore, the flagrant trespasser concept will likely generate substantial litigation over its meaning. Ultimately, this exception may be sharply limited, barring recovery only for a very narrow category of trespassers, such as armed burglars.

Thus, instead of following the historical common law approach found in the Restatement (Second), and providing that land possessors generally owe no duty to trespassers (subject to a few narrow exceptions), the new Restatement takes a “reformist” approach, imposing liability on land possessors for harm to any entrant except the “flagrant trespasser.” The new duty requirement would particularly impact owners and renters of residential property.

Larry Stewart, a former president of the Association of Trial Lawyers of America, now known as the American Association of Justice, and the lead Reporter (or “author”) for the new Restatement, Wake Forest Law School Professor Michael Green, recently co-wrote an article in TRIAL, the monthly magazine of the trial bar, calling the new Restatement a “powerful new tool” for “[t]rial lawyers handling tort cases.” They described the new Restatement as “a work that trial lawyers would be well advised to review and use.” In particular, they listed the new duty rule for land possessors as one of the “top 10” provisions in the new Restatement that will benefit trial lawyers, characterizing the new rule as “a major departure from the first and second restatements, which followed the historic approach....” Michael D. Green & Larry S. Stewart, *The New Restatement’s Top 10 Tort Tools*, TRIAL, Apr. 2010, at 44-48.

The new Restatement, like other “restatements” of the law adopted by the ALI, would not have the force of law by itself, but would become “law” if adopted by courts. ALI “restatements” are highly influential with courts because the ALI is perceived to be objective. It is composed of the nation’s top echelon judges, law professors, and practitioners.

An example is the Restatement (Second) of Torts § 402A (1965), which helped launch the doctrine of strict products liability. At the time the ALI approved § 402A, California was the only state to recognize strict products liability. Nevertheless, the ALI chose to include it in the Restatement (Second). Within a decade, the doctrine of strict product liability set forth in § 402A was adopted by most states and generally became the “law of the land.”

If courts adopt the new Restatement Third’s § 51, the new duty rule could wreak havoc on land possessors, subjecting private homeowners to liability and possibly leading to higher insurance premiums. The proposed change would impose undue burdens on property owners to take precautionary measures to deter trespassers from coming onto land and protect them from injury when they are there.

ALEC’s model Trespasser Responsibility Act would codify the historical common law approach and “freeze” the law of trespasser liability as it exists today, preempting courts from adopting the non-traditional approach found in § 51 of the new Restatement. The approach found in the ALEC model is taken from the Restatement (Second) and finds additional support in the statutory laws of a number of states.¹

As a general rule, the model act follows the traditional rule set forth in § 333 of the Restatement (Second) and provides that a possessor of land does not owe a duty of care to a trespasser and is not subject to liability for any injury to a trespasser.

¹ See Ark. Code Ann. § 18-60-108 (no liability to trespasser unless harm results from an attractive nuisance and claimant is 18 or younger); Colo. Rev. Stat. Ann. § 13-21-115(3)(a) (no liability to trespasser except for injuries willfully or deliberately caused by the landowner); 25 Del. Code § 1501 (no liability for trespasser on private residential or farm premises unless injury was intentional or caused by the willful or wanton disregard of the rights of others); Ky. Rev. Stat. § 381.232 (no liability to trespasser except for intentional injuries); *see also* Cal. Civ. Code § 847 (no liability for trespasser engaged in a felony); Fla. Stat. § 768.075 (no liability for trespasser who is intoxicated, under the influence of illegal drugs or engaged in a felony; land owner only liable for harm to undiscovered trespasser if injury was intentional; with respect to discovered trespassers, landowner must refrain from gross negligence or intentional misconduct and must warn discovered trespasser of known dangerous conditions not readily observable by others); Fla. Stat. § 810.125 (no liability for unlawful trespassers injured on agricultural land); Miss. Code Ann. § 97-17-103 (no liability for harm to criminal trespasser); Ohio Rev. Code § 2305.40 (no liability for using force to repel a criminal trespasser attempting to enter a dwelling); 2 Okla. St. Ann. § 16-71.7 (no liability for harm to trespasser injured on agricultural land unless harm results from willful or wanton acts of negligence or gross negligence by the land possessor); 42 Pa. Cons. Stat. Ann. § 8339.1 (railroads not liable for harm to trespassers unless harm results from willful or wanton failure to guard or warn against a dangerous condition, use or activity); R.I. Stat. § 9-1-46 (no liability for harm to trespasser engaged in a felony unless injuries were inflicted by unreasonable force); S.D. Codified Laws § 20-9-11 (no liability for harm to trespassers on flooded land except for injuries caused by willful and wanton misconduct by the land possessor); Tex. Civ. Prac. & Rem. Code § 75.002 (no liability for harm to trespasser injured on agricultural land except for willful or wanton acts or gross negligence by the land possessor).

The model act also contains a number of exceptions where liability could be imposed consistent with existing law and the Restatement (Second) §§ 334-339

First, a land possessor may be subject to liability if the trespasser's physical injury or death was deliberately caused by the possessor, except that a possessor may use reasonable force to repel a trespasser that has entered the land or a building with the intent to commit a crime. Most states follow a similar approach and permit claims where the land possessor's misconduct was intentional, willful or wanton. The model act does not contain the "willful" conduct requirement because it is duplicative of the "intentional" injury exception. "Wanton" misconduct also was omitted from the model because the term is vague and not well-defined in the law. Legislators could decide whether to include the entire list of traditional exceptions.

Second, a land possessor could be subject to liability for harm to a child trespasser under the doctrine of attractive nuisance. The circumstances in which liability may be imposed track § 339 of the Restatement (Second). The model act defines a child as a minor age sixteen or under, recognizing the presumed capacity of older adolescents to be aware of the consequences of their actions and their presumed capacity for crime. A few courts have set the maximum age of fourteen for the possible application of the rule; the Restatement (Second) does not contain a specific age limit but explains that as a child's age increases, the situations in which recovery may be permitted become fewer until at some point, "probably beyond the age of sixteen," there are no longer any conditions under which the child trespasser may recover. *See* Restatement (Second) § 339 Comment c. Legislator would have flexibility to raise or lower the age limit (e.g., eighteen or fourteen) or follow the approach in Restatement (Second) § 339 when the model is adapted for introduction as legislation in a state.

Third, the model act allows liability to be imposed for harms to trespassers that constantly intrude upon a limited area and are harmed from highly dangerous activities carried on at that location by the possessor or highly dangerous artificial conditions created or maintained by the possessor at that location. These exceptions track § 334 and § 335 of the Restatement (Second). While these exceptions are found in the common law, however, they violate the rights of land possessors to have exclusive control over their land and have not been included in some state laws that codify trespasser rights and responsibilities. Consequently, the exceptions are bracketed in the model act to give legislators the flexibility to remove them before legislation is introduced in a particular state.

Finally, the model act allows liability to be imposed for harms to known trespassers from dangerous activities carried on by the possessor, highly dangerous artificial conditions maintained by the possessor, or from controllable forces. These exceptions track §§ 336-338 of the Restatement (Second). As with the model act sections reflecting § 334 and § 335 of the Restatement (Second), the exceptions tracking §§ 336-338 of the Restatement (Second) are bracketed to give legislators the flexibility to remove them before legislation is introduced in a particular state.

The Promoting “Merit” in Merit Selection Act Model Legislation for State Appellate Judicial Appointments

Section 1. {Selection of Members, Size, Composition and Administration}

- (A) The Legislature hereby establishes a Commission to recommend appellate judicial candidates for appointment by the Governor.
- (B) The Commission shall be comprised of either 12 [or 15] members, with two-thirds of them non-lawyers. The chief justice of the state supreme court shall also be a member, (that is, a 13th or 16th member), and serve as chair of the Commission, but shall only vote to break a tie. Members other than the chief justice shall serve staggered four year terms.
- (C) The lawyer members shall be appointed by the Governor with the advice and consent of the senate.
 - (1) The lawyer members shall be nominated by the executive board of the state bar and presented to the Governor for his appointment. These nominations shall be made public.
 - (2) No more than half (or half plus one) of the lawyer members shall be from the same political party.
- (D) The non-lawyer members shall be appointed by the Governor with the advice and consent of the state senate.
 - (1) The state shall convene a sizable non-attorney committee (e.g., nine-member) to accept and solicit candidates for non-lawyer appointments to the Commission, review their qualifications, advance the names of all applicants with the committee’s recommendations to the Governor. These recommendations shall be made public.
 - (2) No more than half (or half plus one) of the non-lawyer members shall be from the same political party.
- (D) Vacancies and appointments to serve on the Commission shall be widely publicized.
- (E) All resources necessary to carrying out the Commission’s official duties shall be provided, including: staff, equipment and materials, and orientation and continuing education of members.

Section 2. {Code of Conduct for Commissioners}

- (A) The Commission shall be governed by written ethical and procedural rules approved by the state senate and signed by the Governor.

(B) Each commissioner shall be required to take an oath affirming his or her commitment to abide by the written ethical and procedural rules governing the Commission.

(C) Each commissioner shall disclose to the Commission all current or past personal and business relationships with a prospective applicant. Commissioners shall refrain from participating in any deliberations or votes concerning any applicant who is their current business or law partner, as well as any applicants whom the commissioners believe they are incapable of considering impartially.

(D) The Commission shall only act upon the existence of a quorum.

(E) Having transmitted to the Governor the names of applicants the Commission is nominating, commissioners shall refrain from influencing or attempting to influence, either directly or indirectly, the decision of the Governor or the Governor's staff.

Section 3. {Education of Commissioners}

(A) Each new commissioner shall participate in a formal orientation with guidelines that are approved by the state senate and signed by the Governor.

(B) Every two years, the commissioners shall participate in a continuing education program in which the Commission's mission, code of conduct and policies are thoroughly reviewed.

Section 4. {Qualifications of Appellate Judicial Candidates}

(A) An appellate judicial candidate's merit shall be the primary criterion for consideration. The Commission shall consider a judicial candidate's experience, integrity, professional competence, judicial temperament and overall service to the law. The Commission shall consider geographic and demographic diversity.

(B) Each appellate judicial candidate must conform to the state's residency and bar membership requirements.

(C) The Commission shall publicize the criteria for judicial selection.

(D) The Commission shall recommend no fewer than three judicial candidates to the Governor for each judicial vacancy. If only three judicial candidates are recommended, no more than two may be of the same political party. If more than three judicial candidates are recommended, no more than sixty percent may be of the same political party.

Section 5. {Transparency and Public Participation}

(A) All applications for a judicial vacancy shall be posted on the respective court's website.

(B) Whenever a judicial vacancy arises, the Commission shall hold no fewer than two public meetings to consider applicants for such vacancy. The Commission shall invite public comment about applicants at the beginning of each hearing.

(C) All information provided to the Commission by applicants or third parties shall be made public as appropriate.

(D) All hearings by the Commission shall be open to the public; however, the Commission may move from a public session to a private executive session to promote “open and frank” discussion provided that two-thirds of the commissioners vote in favor of such action.

Section 6. {Presentation and Selection of Candidates}

(A) The Commission shall submit its recommendations to the Governor no later than 60 days after the occurrence of a judicial vacancy.

(B) The governor must appoint one of the candidates from the Commission. If the governor fails to appoint within 60 days of the nomination of candidates, the chief justice must appoint one of the nominees.

Section 8. {Severability Clause}

Section 9. {Repealer Clause}

Section 10. {Effective Date}

The Promoting “Merit” in Merit Selection Act

Model Legislation for State Appellate Judicial Appointments

Background and Summary

Selecting judges in a fair and open manner is one of the most important means of ensuring the integrity of state court judicial systems. Merit Selection, sometimes even referred to as the “Missouri Plan,” where it first originated, is a process whereby an independent commission recommends judicial candidates to an appointing authority, usually the governor. In theory, judges are chosen based on qualifications, yet over the years even Missouri’s own selection process faced accusations that it is an exclusive, secretive and political process dominated by the trial bar. The model legislation restores the “merit” in merit selection and promotes diversity, transparency and public participation in the judicial nomination and selection process, ensuring an independent, impartial and competent judiciary.

The model legislation is designed for states that utilize an appointment process to select appellate judges and is not intended for those that elect their judges. The model legislation is not intended to advocate for one form of judicial selection over another. Rather, it aims to improve existing merit selection systems. It is drawn from the U.S. Chamber Institute for Legal Reform’s, *Promoting “Merit” in Merit Selection: A Best Practices Guide to Commission-Based Judicial Selection*, which incorporates elements of Arizona’s judicial selection process as well as sources such as the American Judicature Society, the American Bar Association and the Massachusetts code of conduct for merit selection. It includes a number of provisions to help ensure fair, effective, merit-based judicial selection and covers six broad themes: 1) selection of members, size, composition and administration of state judicial nominating commissions; 2) a code of conduct; 3) education for commissioners; 4) qualifications of judicial candidates; 5) transparency and public participation in the selection process; and 6) the presentation and selection of candidates.

Some of the key features in the model legislation include:

- An independent, bipartisan citizen Commission that evaluates potential judicial candidates and makes recommendations to the governor;
- A requirement that the Commission include broad public representation and that it be diverse in geography, political affiliation and occupation. Specifically, the Commission must be comprised of either 12 or 15 members, with two-thirds of them non-lawyers and no more than half may be of the same political party;
- A requirement that the Governor appoint the commissioners with the advice and consent of the Senate;
- A requirement that no greater than 60 percent of the candidates that the Commission recommends for any given judicial vacancy can be of the same political party;

- A requirement that all meetings of the Commission regarding judicial candidates be open to the public and public comment be solicited; and
- A requirement that members base their consideration of potential judicial candidates on the candidates' experience, integrity, professional competence, judicial temperament and overall service to the law.



Cy Pres Working Group

Civil Justice Task Force

Annual Meeting | Manchester Grand Hyatt | San Diego, C.A.

August 5, 2010 | 10:15 a.m.-11:15 a.m.

10:15 a.m. Call to Order, Welcome, and Introductions

10:30 a.m. **Discussion:** Developing and Tweaking ALEC Resolution on the Codification of Cy Pres

11:15 a.m. Adjourn

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